85-2164

Supreme Court, U.S.
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CLERK

No. 85-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

WALTER D. AMES AND MARION L. AMES,
Petitioners,

vs.

STANDARD OIL COMPANY (INDIANA),
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTION PRESENTED

Does complete denial of the right to pending discovery constitute denial of due process of law when the evidence necessary to sustain a cause is within the exclusive control of a summary judgment movant from whom discovery is sought?

THE PARTIES

The parties before this Court are those set forth in the caption, except that respondent has, on information and belief, changed its name to Amoco Corporation.

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NO. 86-

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1985

WALTER D. AMES and MARION L. AMES,

Petitioners,

vs.

STANDARD OIL COMPANY (INDIANA),

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioners, Walter D. Ames et al., respectfully pray that a writ of certiorari issue to review the order of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on February 12, 1986, or, preferably, that the order be vacated with instructions to permit petitioners discovery.

OPINION BELOW

The one-page opinion and order of the court of appeals is unreported. It is annexed as Appendix A. An order denying the petition for rehearing is Appendix B. A memorandum opinion and order of the District Court granting summary judgment to respondent on several of the claims is Appendix C. The district court order dismissing the action is Appendix D. The order of the Magistrate staying plaintiff's discovery is Appendix E.

JURISDICTION

The order of the court of appeals was entered on February 12, 1986. A petition for rehearing [A-3] was denied on April 3, 1986, and this petition for certiorari is filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §2101(c).

CONSTITUTIONAL PROVISION INVOLVED

No person shall ... be deprived of life, liberty or property, without due process of law.... [Amendment 5]

STATEMENT OF THE CASE

Petitioners Ames have filed a second amended complaint that contains multiple counts, of which only the counts for breach of written contract and breach of an oral contract will be referred to as the basis for this petition. In support of their breach of contract counts, petitioners commenced discovery by filing interrogatories under Rule 33, requests for production under Rule 34, and requests for admissions under Rule 36, F.R.Civ.P. Respondent Standard Oil Company (Indiana) moved for an extension of time and then a further extension, which was denied. Standard Oil was given a fixed period of time to respond to plaintiff's discovery by the Magistrate to whom discovery matters had been referred.

Standard Oil had moved for summary judgment on all counts of the complaint other than the breach of oral contract, which count was later included by reply brief. One of the bases of Standard Oil's motion was that the dispute over the written contract was subject to arbitration. On that basis Standard Oil moved for reconsideration of the Magistrate's order enforcing discovery, and by order of May 7, 1984 [A-23] the Magistrate reversed his prior order and stayed all of petitioners' discovery until "...the [District] Court decides the pending motion on the threshold ground of whether the dispute between the parties is subject to arbitration." Sensing what was happening, petitioners appealed from the Magistrate's order and moved the district court for a modification of its scheduling order to permit discovery, and for a pretrial conference or discovery conference.

In a memorandum opinion and order filed July 26, 1984, the district court granted the motion

for summary judgment on the merits of the breach of written and oral contract claims, the former because the contract was said to be unambiguous [A-10], the latter on the basis that a writing was required. [A-12] It also refused to modify the scheduling order to permit discovery. [A-20] By contrast to the Magistrate's order staying discovery until the threshold issue of arbitrability had been determined, the counts for breach of contract were decided on the merits, with the stay of all discovery in effect.

An order dismissing the entire action followed. [A-22]. Before the court of appeals, respondent's motion for summary affirmance was granted. [A-1]

STATEMENT OF FACTS

The underlying facts are that in 1973 Solarex Corporation was formed in Rockville, Maryland. At one time Solarex was the world's leading producer of solar cells for terrestial use. Solar cells

are impregnated wafers which, when exposed to light, convert that light directly into electricity.

In 1979 respondent Standard Oil entered the picture. A key provision in an agreement of May 25, 1979 between Standard Oil and Solarex was that when Standard Oil owned more than 40% of the outstanding shares of class A common stock of Solarex, it would make a tender for the remaining shares at a certain price. In support of its motion for summary judgment Standard Oil by affidavit swore that its percentage of class A common stock never exceeded 39%. In making that assertion Standard Oil did not count other classes of Solarex stock it owned, including a class convertible into class A common stock.[1/]

1/ Petitioners have information that class A common stock of Solarex into which Standard Oil's stock could be converted had actually been issued, but could not take discovery to prove it.

Regarding the oral contract, at an annual meeting of Solarex shareholders on April 30, 1982, Standard Oil's manager of corporate development promised Solarex shareholders that Standard Oil would shortly make a tender offer for their stock. Petitioners Ames accepted that offer. Standard Oil never made the tender.2/

The fortunes of Solarex declined rapidly thereafter. On September 16, 1983 Solarex was merged into a subsidiary of Standard Oil and the Solarex shareholders paid a small fraction of the price at which Standard Oil would have had to pay on a tender offer. All the Solarex documents, including those that would show writings of the oral promise and issuance of class A shares to Standard Oil, were delivered to the possession of that respondent.

2/ Petitioners have information that the tender offer was actually reduced to writing, but could not take discovery to prove it.

REASON FOR GRANTING CERTIORARI

Although this Court has approached the question before, it has not had occasion to assess whether complete denial of discovery is a denial of due process of law. Hickman v. Taylor, 329 U.S. 495, 67 S.Ct. 385 (1947) would so indicate.

PROPER DISCOVERY IS THE SINE QUA NON OF DUE PROCESS

Prior to the present litigation, petitioners had not believed that there was any doubt about the propriety of reasonable discovery, i.e., discovery that did not approach harassment. The Federal Rules of Civil Procedure devote 12 rules to discovery. As this Court said in Hickman v. Taylor, 329 U.S. 495, 507, 67 S.Ct. 385, 391 (1947):

> Discovery, in other words, is not a one-way proposition. It is available in all types of cases at the behest of any party, individual or corporate, plaintiff or defendant.

* * *

> We agree, of course, that the deposition-discovery rules are to be accorded a broad and liberal treatement ... Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.

If mutual knowledge of all the relevant facts is essential to proper litigation, how can this tenet be squared with denial to petitioners of all discovery: interrogatories, requests for production, requests for admissions?[3/]

The statement in Hickman v. Taylor that discovery rules are to accorded broad and liberal treatment was echoed in Schlagenhauf v. Holder, 379 U.S. 104, 114, 85 S.Ct. 234, 241 (1964). In First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 88 S.Ct. 1575 (1968), at issue was the balancing of discovery had by parties, and

---

3/ Thereafter, petitioners planned to take such depositions as appeared necessary on the basis of documents produced.

whether the petitioners should have been permitted additional discovery. No such fine balancing is requisite here. Petitioners have had nothing of their proposed discovery. Their information of issuance of class A common shares to cover Standard Oil's preferred shares could not be verified. Their information that there were writings regarding Standard Oil's promise to make a tender offer could not be presented to the court.

Indeed, since Standard Oil went to the edge (39%) of acquiring the 40% trigger percentage of shares, it is not inconceivable that Standard Oil made a good faith error in calculation. If a litigant must rely on the determination of his opposing party without discovery, litigation is reduced to a contest of who possesses the pertinent documents, and in this case Standard Oil has all the documents.

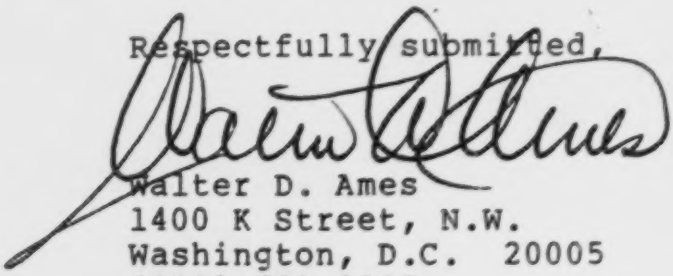
Petitioners recognize the temporal exigencies that bear on this Court. They do not seek a full examination on the merits. Instead, the utter

denial of discovery to petitioners here is submitted to be a violation of due process that this Court can correct without a large expenditure of its time.

CONCLUSION

The petition should be granted and the order [App. A] from which appeal is taken vacated, with instructions that the court of appeals order that the district court orders [App. C and D] be vacated and that petitioners be permitted full and adequate discovery prior to trial or resolution of any dispositive motion brought by respondent.

Respectfully submitted,



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APPENDIX

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5997 September Term, 1985

C.A. NO. 83-01183

Filed: February 12, 1986

Walter D. Ames, et al.,

Appellants

v.

Standard Oil Company (Indiana)

BEFORE: Robinson, Chief Judge
Wald and Ginsburg, Circuit Judges

O R D E R

Upon consideration of appellee's motion for summary affirmance, the opposition, and the reply thereto, it is

ORDERED by the court that the motion for summary affirmance is granted. In reviewing a ruling of a trial court on a motion to dismiss under Federal Rule of Civil Procedure 41(b), this court must affirm the ruling unless the trial

court has clearly abused its discretion. Hobson v. Wilson, 737 F.2d 1, 45 (D.C. Cir. 1984), cert. denied, 105 S. Ct. 1843 (1985). In the instant case the trial court did not abuse its discretion. Since it is abundantly evident that the district court has correctly decided this matter, further briefing and oral argument would not affect this court's decision. See Sills v. Bureau of Prisons, 761 F.2d 792, 794 (D.C. Cir. 1985).

The clerk is directed to withhhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See Local Rule 14.

Per Curiam

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5997 September Term, 1985

C.A. NO. 83-01183

Filed: April 3, 1986

Walter D. Ames, et al.,

v.

Standard Oil Company (Indiana)

BEFORE: Robinson, Chief Judge; Wald and Ginsburg, Circuit Judges

O R D E R

Upon consideration of appellants' petition for rehearing, it is

ORDERED, by the Court, that the petition is denied.

Per Curiam

FOR THE COURT
GEORGE A. FISHER,
CLERK

BY:
Robert A. Bonner
Chief Deputy Clerk

Appendix C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WALTER D. AMES and MARION L. AMES, Plaintiffs	)
v.	) C.A. No. 83-1183
STANDARD OIL COMPANY (Indiana), Defendant	) Filed July 26, 1984

MEMORANDUM OPINION AND ORDER

This matter is before the Court on defendant's motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. In 1979, Standard Oil Company (Standard) invested in the Solarex Corporation and signed a Stock Purchase Agreement dated May 25, 1979, of which Section 10(d) is at issue.

> At such time as a purchase of shares by Standard results in its ownership of more than 40% of the outstanding shares of class A common stock, Standard will extend an offer to other stockholders to purchase all shares offered to it within the succeeding one year at a price per share no lower to [sic] that last paid by Standard for Class A common stock

> in an arms length transaction with any of the Sellers, provided no materially adverse change in the business of Solarex occurs in such period. Any dispute arising out of this paragraph shall be subject to arbitration as provided in Section 15 hereof.

Section 15 stated that all disputes shall be settled by arbitration. The Stock Purchase Agreement provided that Standard purchase 580,000 shares of Class A common stock and 580,000 shares of Class B non-voting common stock at an agreed price. At the time of Standard's initial investment, both classes existed.

Pursuant to the terms of the Agreement dated October 3, 1980, Standard purchased 400,000 shares of Solarex Preferred Stock Series 1-5 which could be converted into Class A common after September 30, 1985. Standard also purchased shares in Semix, Inc., a majority owned subsidiary of Solarex.

In 1982, Standard made additional purchases of Class A common and Preferred Series 1-5 stock pursuant to an agreement dated February 4, 1982

and the October 3, 1980 agreement. As of April 25, 1983, the date plaintiff filed his complaint, Standard owned less than 39% of Class A common and continued to own less than 39% through the date of the subsequent merger between Solarex and Amoco Solar.

Plaintiffs allege several causes of action in connection with the stock agreement and purchases by Standard. First plaintiff asserts a breach of contract claim by equating the Class B common stock, the Preferred Series 1-5 stock and the Semix stock purchased by Standard with the Class A common stock of Section 10(d) of the Stock Purchase Agreement dated May 25, 1979. Plaintiffs assert that this interpretation of Section 10(d) would indicate a breach by Standard since Standard would have exceeded the 40% threshold thus becoming obligated to make an offer to buy plaintiffs' shares.

Plaintiffs allege a tortious interference with contractual relationship and move to file a second

amended complaint relabeling the tortious interference count to state a fraud cause of action. Further, plaintiffs' first amended complaint alleges a RICO violation under 18 U.S.C. § 1961, et seq.

Standard seeks summary judgment on each of the above counts asserting that the arbitration clause in § 10(d) is appropriate to resolve the dispute and alternatively that plaintiffs have no grounds for each cause of action.

Breach of Contract Claim

Parties agree that Standard never owned greater than 40% of the Class A common stock. However, plaintiffs allege that the parties' understanding was that Standard's ownership of other classes of stock should be added to the amount of Class A common to meet the 40% threshold under the agreement requiring a buy-out offer be made to plaintiffs. Parties agree that the plaintiffs, as shareholders, were third party beneficiaries to the agreement containing

§ 10(d). As a general rule, a "promisor may assert against the beneficiary any defense that he could assert against the promisee if the promisee were suing on the contract." Schneider Moving and Storage Co. v. Robbins, 52 U.S.L.W. 4476, 4477 (U.S. April 18, 1984). The defense of failure to arbitrate is good against third party beneficiaries to a contract with an arbitration provision. See e.g., 2 Williston on Contracts § 364A at 877 (Rev. Ed.).

Plaintiffs assert that they are not bound by the § 10(d) arbitration clause since the general rule should apply only to creditor beneficiaries and plaintiffs assert they are donee beneficiaries. In support of this claim, plaintiffs cite Schneider in which trustees who were donee beneficiaries were permitted to sue thus avoiding an arbitration clause. Schneider involved a collective bargaining agreement between a union and two employers which, inter alia, required the employers to contribute to two

multi-employer pension trust funds. These funds were administered by trustees under agreements that were separate from the collective bargaining agreement. The trustee agreements provided the trustees with power to enforce employer's contributions to the funds through any appropriate legal proceeding. Schneider, supra, at 4476. The presence of the separate trustee agreements, not solely the trustees' designation as donee beneficiaries, empowered the trustees to maintain their actions in court without arbitration under the contract. Id. at 4478. As the defendant notes, plaintiffs in the instant case have no separate agreement that would exclude them from the general rule. It would be inequitable for plaintiffs to reap the benefits of the contract as third party beneficiaries without being bound by the arbitration clause contained therein as a mechanism to handle disputes. Thus, plaintiffs have presented no authority for their assertion

that a creditor beneficiary is bound to an arbitration clause but a donee beneficiary is not.

Further, defendant's motion for summary judgment on the breach of contract cause of action will be granted since plaintiff may not claim that the language of the agreement requiring more than 40% ownership of Class A common means ownership of shares other than Class A common since it is inconsistent with the language of the contract. The agreement provides for the application of Delaware law (Defendant's Exhibit 1, Motion for Summary Judgment, ¶ 15.2) and in that jurisdiction, where the contract is clear and unambiguous, the language is given its plain effect. Myers v. Myers, 408 A.2d 279, 280 (Del. 1979); see also, Nepa v. Marta, 415 A.2d 470, 473 (Del. 1980) ("in the absence of ambiguity, there is no room for construction"); Hibbert v. Hollywood Park, Inc., 457 A.2d 339, 343 (Del. 1983).

Plaintiffs' reliance on an alleged oral comment made by Dr. Varadi, a party to the contract, affirming the accuracy of the plaintiffs' draft complaint containing a breach of contract action does not assist the plaintiffs since such a statement is barred by application of the parol evidence rule. Aetna Insurance Co. v. Newton, 274 F. Supp. 566, 571 (D.Del. 1967), appeal dismissed, 398 F.2d 729 (3d Cir. 1968), on remand 315 F. Supp. 810 (D.Del. 1970), aff'd 456 F.2d 655 (3d Cir. 1972). The integration clause in the agreement (Defendant's Exhibit 1, ¶ 16) reinforces this analysis. Beach v. KDI Corp., 344 F. Supp. 1230, 1234 (D.Del. 1972).

Therefore, under both the general rule for third party beneficiaries and arbitration clauses and the prohibition against contradicting an unambiguous written contract with parol evidence, summary judgment will be granted defendant on the breach of contract claim.

Oral Promise

Under plaintiffs' second amended complaint, Ames alleges that Standard breached an oral promise made by Gordon McKeague, manager at Standard, stating that Standard would purchase Solarex shares in the future. Summary judgment is granted defendant on the oral contract claim since an oral agreement to purchase securities is uneforceable under the Statute of Frauds. Uniform Commercial Code § 8-319 as adopted in Delaware (6 Del. Code § 8-319) and Md. [Com. Law] Code Ann. § 8-319 (1975) (where the alleged oral promise was made and accepted).

Tortious Interference

Plaintiffs in their pleadings have admitted that as a matter of law, Standard could not have tortiously interfered with its own contract. Plaintiffs' Opposition Brief Part 2 at 2-3. The tort arises only when there is an interference with a contract between plaintiff and one who is not a party to the contract. Donohoe v. Watt, 546

F. Supp. 753, 757 (D.D.C. 1982), aff'd, 713 F.2d 864 (D.C. Cir. 1982); Metro D.C. Parking, Highway & Construction Materials Council v. Roubin & Janerio, Inc., 93 CCH Lab. Cas. ¶ 13,443 (D.D.C. May 26, 1981) ("a defendant's breach of his own contract does not provide a basis for tortious interference with that same contract.") (citing Prosser, Torts § 129 at 934 (1971)). Defendant's motion for summary judgment will be granted as to the tortious interference cause of action.

Racketeer Influenced and Corrupt Organizations Court

Plaintiffs claim a violation of the RICO statute, 18 U.S.C. 1961, et seq., alleging Standard engaged in activities which constitute "fraud in the sale of securities" under 18 U.S.C. § 1961(1). Plaintiffs allege that Standard and Dr. Lindmayer, parties to the agreement, conspired to avoid the intent of § 10(d) by interstate activities and that plaintiffs were injured since they were "entitled to be recipients of such

tender offer by Standard Oil" which was not forthcoming as a result of Standard's alleged fraudulent conduct in buying Solarex stock other than Class A common. (Plaintiffs' Complaint at 24; Deposition Transcript of Walter Ames at 74.) Plaintiffs assert a violation of § 1962(b), (c) and (d) which provide that:

> (b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
>
> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

Under a RICO allegation, plaintiffs must allege that plaintiffs sustained injuries that "were caused by the distinctive RICO violation, and not simply by the commission of the predicate offense." Guerrero v. Katzen, 571 F. Supp. 714, 718 (D.D.C. 1983). Plaintiffs fail to allege with particularity any fraudulent sales of securities by Standard. In Guerrero, the RICO claim was dismissed under Federal Rule 12(b)(6) since plaintiffs alleged only that they were injured by reason of the underlying fraud. The court found that the allegations in the RICO count "add nothing to the substance of the claim." Id. at 720, quoting Harper v. New Japan Security International, Inc., 545 F. Supp. 1002, 1007-08 (C.D. Cal. 1982).

Fraud in the sale of securities is questionable since there are no specific allegations setting forth the alleged fraudulent activity by Standard that comports with 18 U.S.C. 1961, et seq. The fraud alleged is the attempt to

avoid § 10(d) by Standard's purchase of other classes of stock. No allegation is made that Standard had a legal or contractual obligation to purchase Class A common or that there was any legal impediment to Standard's investment in other classes of Solarex stock. The only possibility of finding an impediment to purchasing other classes of stock would be through an interpretation of the contract's Section 10(d) favorable to plaintiff. As herein ordered, arbitration is the process to resolve contractual disputes arising under § 10(d).

Defendant further asserts that plaintiffs must plead their RICO claim with specificity required under Rule 9(b), Fed. Rules of Civ. Pro. Rule 9(b) extends to the essential elements of the particular type of racketeering violation that is here alleged. Consequently, the plaintiffs must state with particularity the nature of the enterprise alleged as well as the acts constituting the basis for the underlying claims of fraud in the sale of securities. Rule 9(b)

precludes generally averring fraud since "[a] complaint alleging fraud should be filed only after a wrong is reasonably believed to have occurred; it should seek to redress a wrong, not to find one." Segal v. Gordon, 467 F.2d 602, 607-088 (2d Cir. 1972).

Although holding serious doubt as to the sufficienty of the plaintiffs' RICO allegation, this Court recognizes that the plaintiffs have been severely restricted in their discovery attempts. Plaintiffs have filed an objection to the Magistrate's order dated May 7, 1984 staying plaintiffs' discovery requests until this Court has ruled on the dispositive motions. Plaintiffs further have moved for a modification of this Court's scheduling order. Both motions are hereby denied since extensive discovery before arbitration would be a waste of resources. The count alleging a RICO violation will be stayed until such time as the parties have, through arbitration, interpreted the agreement. At such

time, if the RICO claim is still at issue, plaintiff will have leave to file an amended complaint in conformity with Federal Rule of Civil Procedure 9(b). An interpretation of the contract through arbitration may resolve whether or not it could be fraudulent to attempt to circumscribe § 10(d).

Second Amended Complaint

Plaintiffs moved to file a second amended complaint relabeling the tortious interference count to fraud. Plaintiffs incorrectly assert that the amendment is semantic only and makes no substantive changes. The fraud count alleges that Standard entered the 1979 agreement with the intent to avoid § 10(d) and thus fraudulently induced Solarex to enter that contract. As under the RICO count, plaintiffs have failed to allege the fraud count with the specificity required under Rule 9(b), Federal Rules of Civil Procedure. As stated herein, the settlement of disputes as to § 10(d) is to be decided by

arbitration. Whether purchase of stock other than Class A common was restricted by § 10(d) is a matter subject to arbitration under the language of the contract between the parties. Therefore, plaintiffs' motion to file a second amended complaint is granted and the fraud count is hereby stayed until after resolution of the language of the contract by arbitration. At such time, if pursuing the fraud claim is appropriate, plaintiff will have leave to file an amended complaint alleging the fraud with specificity as required under Rule 9(b).

Rebuttal Brief

Plaintiffs submitted a rebuttal brief, lacking any additional legal or factual support to the defendant's reply to plaintiffs' opposition to defendant's motion for summary judgment. Defendant moved to strike the rebuttal brief with plaintiffs opposing and requesting an award of expenses on defendant's motion to strike plaintiffs' rebuttal brief. The Federal Rules of

Civil Procedure do not provide for a rebuttal brief and defendant's motion to strike will be granted.

It is hereby the 25th day of July, 1984

ORDERED that defendant's motion for summary judgment as to the breach of contract claim will be granted as arbitration is the appropriate dispute resolution mechanism; and it is

FURTHER ORDERED that defendant's motion for summary judgment will be granted as to the breach of oral promise claim; and it is

FURTHER ORDERED that defendant's motion for summary judgment will be granted as to the tortious interference claim; and it is

FURTHER ORDERED that the motion to file a second amended complaint is granted; and it is

FURTHER ORDERED that the motion for modification of the Court's scheduling order is denied; and it is

FURTHER ORDERED that the RICO and Fraud counts are stayed until such time as arbitration is completed and plaintiff may then file, if appropriate, a third amended complaint in compliance with Federal Rule of Civil Procedure 9(b); and it is

FURTHER ORDERED that plaintiffs' rebuttal brief be stricken from the record.

_____

Thomas F. Hogan
United States District Judge

Appendix D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WALTER D. AMES, et al.	)
	)
Plaintiffs	)
	)C.A. No. 83-1183
v.	)
	)
STANDARD OIL COMPANY (Indiana),	)Filed July 28, 1985
	)
Defendant	)

O R D E R

Upon consideration of the defendant's Motion to Dismiss, the plaintiffs' opposition thereto, the entire record, and in accordance with the memorandum opinion issued this day, it is this 26th day of July, 1985, hereby

ORDERED that the above captioned case shall be and is dismissed.

Thomas F. Hogan
United States District Judge

A-23
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WALTER D. AMES, ET AL.,	)	
Plaintiffs,	)	
v.	)	C.A. No. 83-1183
STANDARD OIL COMPANY (INDIANA),	)	Judge Hogan
Defendant.	)	

O R D E R

Upon consideration of defendant's motion for reconsideration of the Magistrate's Order of April 13, 1984, or in the alternative for modification of that Order, the opposition and reply thereto, it is this 7th day of May, 1984,

ORDERED that the motion to reconsider be and hereby is granted, and it is further

ORDERED that the defendant's reply to the plaintiff's discovery requests including plaintiff's requests for admissions be stayed until after the Court decides the pending motion for summary judgment or dismissal on the threshold ground of whether the dispute between the parties

is subject to arbitration. Should the pending motion be denied on the grounds that this litigation is not subject to arbitration, the defendant shall respond to the plaintiff's discovery requests within 45 days of the entry of such Order.

Patrick J. Attridge
United States Magistrate